

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL CASE NO: 3:19-CV-503-DCK**

**RHONDA BLANTON and HENRY BLANTON,)
on behalf of themselves and their minor)
children, H.B., R.B., and J.B.,)**

Plaintiffs,)

v.)

**CINEMARK USA, INC., and)
CINEMARK MOVIES 10,)**

Defendants.)

ORDER

THIS MATTER IS BEFORE THE COURT on the parties’ “Joint Petition For Approval Of Minor Settlement and Request For Hearing” (Document No. 15). The parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c), and this matter is ripe for disposition. Having carefully considered the motion, the record, applicable authority, and the counsel’s presentations at a Motions Hearing, the undersigned will grant the motion.

Rhonda Blanton and Henry Blanton, on behalf of themselves and their three minor children, H.B., R.B., and J.B. (all together “Plaintiffs”), initiated this action with the filing of a “Complaint” (Document No. 1-1) on August 12, 2019, in the Superior Court of Mecklenburg County, North Carolina. Plaintiffs bring this action against Cinemark USA, Inc. and Cinemark Movies 10 (“Defendants”) based on an incident (the “Incident”) at the Cinemark Movies 10, located at 9508 Northeast Court, Matthews, North Carolina, on August 11, 2016. (Document No. 1-1, p. 6). The Incident involved the Plaintiffs’ exposure to feces on one or more seats in the Cinemark 10 movie theatre during a showing of *The Jungle Book*. (Document No. 1-1, pp. 6-10).

As a result, Plaintiffs “suffered physical and psychological injury, as well as embarrassment and disgust.” (Document No. 1-1, p. 10).

The Complaint asserts causes of action for: negligence; premises liability; negligent infliction of emotional distress; spoliation; and seeks punitive damages, as well as attorney’s fees and costs. (Document No. 1-1, pp. 10-15).

Defendants filed a “Notice Of Removal” (Document No. 1) with this Court on October 3, 2019. Defendants contend that removal is proper based on complete diversity, noting that Plaintiffs are all North Carolina residents and that Cinemark USA, Inc. d/b/a Cinemark Movies 10, was incorporated and has its principal place of business in Texas. (Document No. 1, p. 2).

The parties filed a “Joint Notice Of Settlement” (Document No. 10) on December 31, 2019. Then on February 18, 2020, the parties filed the now pending “Joint Petition For Approval Of Minor Settlement and Request For Hearing” (Document No. 15).

By the “Joint Petition ...” the parties seek the Court’s approval of a compromise settlement of all claims between Minor Plaintiffs, by and through their Guardian ad Litem, and Defendants, which are related to and arise out of the Incident that occurred on or about August 11, 2016 at the Cinemark Movies 10, in Matthews, North Carolina. (Document No. 15). The parties have agreed to settle the Minor Plaintiffs’ claims in the amount of \$5,000.00, to be distributed as prescribed in the parties’ “Minor Settlement Agreement and Release” (Document No. 15-1) and as follows:

- a. On behalf of Defendants, Minor Plaintiff **H.B.** shall receive ONE THOUSAND DOLLARS (\$1,000.00);
- b. On behalf of Defendants, Minor Plaintiff **R.B.** shall receive THREE THOUSAND DOLLARS (\$3,000.00); and

c. On behalf of Defendants, Minor Plaintiff **J.B.** shall receive ONE THOUSAND DOLLARS (\$1,000.00).

See (Document Nos. 15, 15-1, and 15-2).

Notably, the undersigned granted Plaintiffs' "Amended Motion To Appoint Guardian ad Litem" (Document No. 20) and approved the appearance of Penny Isenhour as Guardian ad Litem in this matter for the Minor Plaintiffs. (Document No. 21). In addition, after several delays the Court was able to hold a hearing on September 2, 2020, and considered the facts of the case and as well as support for the proposed settlement from counsel and the Guardian ad Litem.

The undersigned, having considered the facts and circumstances of this case and the parties' settlement, and noting that counsel for Minor Plaintiffs has agreed to waive her attorney's fees, and noting the agreement of counsel for the parties and the Guardian ad Litem, has determined that the settlement is fair, just, and reasonable and should be approved. The Court commends the parties, their counsel, and the Guardian ad Litem for their efforts in resolving this matter without further Court intervention.

IT IS, THEREFORE, ORDERED that the parties' "Joint Petition For Approval Of Minor Settlement and Request For Hearing" (Document No. 15) is **GRANTED**.

IT IS FURTHER ORDERED that:

1. Minor Plaintiffs' Guardian ad Litem Penny Isenhour is authorized to conclude the settlement on behalf of, and for the benefit of, the Minor Plaintiffs H.B., R.B., and J.B.
2. The compromise settlement between Defendants and Minor Plaintiffs, by and through their Guardian ad Litem Penny Isenhour, is approved;

3. Upon receipt of the above-listed settlement amounts from Defendants, Plaintiffs' counsel shall distribute said sums as prescribed by the parties' "Minor Settlement Agreement and Release" to the U.S. District Court for the Western District of North Carolina, Charlotte Division, to be held in Trust by the Clerk of Court for the benefit of Minor Plaintiffs, with said funds to be distributed to each Minor Plaintiff when she/he reaches the age of eighteen (18) years old.

IT IS FURTHER ORDERED that the parties shall file a Stipulation of Dismissal on or before **September 15, 2020**.

SO ORDERED.

Signed: September 2, 2020



David C. Keesler
United States Magistrate Judge

